

The Missouri Small Business Regulatory Fairness Board

2006 Annual Report



MISSOURI

DEPARTMENT OF ECONOMIC DEVELOPMENT

www.sbrfb.ded.mo.gov

BACKGROUND

The Missouri Small Business Regulatory Fairness Board (SBRFB) was established by the Missouri General Assembly under HB 576 and SB 456; and, patterned after the United States Small Business Administration, Office of Advocacy, and National Ombudsman which serve as voices for small businesses in the Federal Government.

The legislation is comprised of several key elements:

- 1) State agencies take into account small businesses when promulgating new rules.
- 2) State agencies take into account small businesses when enforcing rules and regulations.
- 3) State Agencies take into account small businesses when reviewing existing rules to see if they are still needed.
- 4) Established the Small Business Regulatory Fairness Board.
- 5) Grant small businesses judicial review.

The most effective way to meet the legislative intent is to encourage a partnership between small businesses and state agencies regarding the promulgation, enforcement, and review of rules and regulations affecting small businesses. Small businesses are defined as a for-profit enterprise with 100 or fewer full-time or part-time employees.

The Missouri Department of Economic Development, in accordance with HB 576 and SB 456 provides staffing and support for the Commission.

BOARD RESPONSIBILITIES

HB 576 and SB 456 states three main responsibilities for the board:

- 1) Provide state agencies with input regarding rules that adversely affect small businesses.
- 2) Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency.
- 3) Provide an evaluation report to the governor and the general assembly, including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri’s small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board for consideration.

MEMBERSHIP

Commission Members

Scott George, Mt. Vernon, Chairman
Randy Angst, Lebanon, Vice Chairman
Representative Brian Baker, Benton
Senator Gary Nodler, Joplin
Micheal Ocello, St. Louis
Representative Trent Skaggs, Independence
Maria Guadalupe Taxman, St. Louis



DED Staff

Carla Mason, Missouri Department of Economic Development
Kevin Stover, Missouri Department of Economic Development
Krista Zurkamer, Missouri Department of Economic Development

MEETINGS

Two meetings were held in 2005 by the Board on the following dates and at the following locations:

- October 6, 2005, Harry S. Truman Building, Jefferson City
- November 14, 2005, Harry S. Truman Building, Jefferson City

Two meetings have been held in 2006 by the Board on the following dates and at the following locations:

- May 1, 2006, Harry S. Truman Building, Jefferson City
- October 2, 2006, Springfield Chamber of Commerce, Springfield

In addition the SBRFB held two Public Hearings in accordance with each of the two meetings in 2006 for small business testimonies.

SBRFB RECOMMENDATIONS

The SBRFB submitted five recommendations for each state agency as we work together to achieve regulatory fairness for small businesses.

- 1) State Agencies should designate a Regulatory Fairness Program representative as the primary contact point between SBRFB and the agency. This individual will be responsible for investigating comments from small businesses and ensure timely review and response. This individual should be independent of enforcement or compliance activities.
- 2) State agencies should provide formal training, both initially and on a periodic basis, for all enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Missouri Small Business Regulatory

- Fairness program. The training should sensitize employees to the unique needs of small businesses.
- 3) State agencies should include a small business impact statement, which meets the requirements of Missouri's regulatory fairness statute, for every proposed rule that impacts small businesses.
 - 4) State agencies should respond within 60 days to all comments generated through the Missouri Small Business Regulatory Fairness program.
 - 5) Each agency should consider the size of businesses when imposing fines (RSMo 536.320) when appropriate. These five recommendations from the SBRFB will be included in the board's evaluations of the agencies when the 2007 Annual Report is published later this year.

SBRFB EVALUATES STATE AGENCIES IN 2007

The SBRFB will publish an annual report for the Governor and General Assembly that evaluates and scores state agency performance based on the SBRFB recommendations regarding regulatory fairness for Missouri's small businesses. The report will include comments from small business owners, state agency responses, and a summary of any public testimony brought before the board for consideration.



SMALL BUSINESS COMMENTS

Small business owners may file written petitions with state agencies regarding adopted rules and regulations objecting to all or part of any rule affecting small businesses. The grounds for filing such petition vary depending on when the rule was adopted. Small business owners may access the Comment Form on the SBRFB website, www.sbrfb.ded.mo.gov. The board also holds Public Hearings around the state with state agencies and small business owners. These events provide a public venue for state agencies to discuss their approach to regulatory fairness for small businesses and for members of the public to comment on state agency performance. Notices of upcoming meetings can be found in the Meetings section of the SBRFB website. SBRFB's focus is limited to state rules and regulations. To comment on a federal regulation, contact the National Ombudsman at 1-888-734-3247. Local concerns should be expressed to your Mayor or County Commissioners.

SMALL BUSINESS COMMENTS SUBMITTED WITH THE SBRFB

The SBRFB received eight small business comments up to December 2006 submitted by a Public Hearing and/or the SBRFB website.

- 1) Tom Kauffman, Air Conditioning
- 2) Becky Heimerick, Schriefers Office Equipment, Jefferson City
- 3) Bill Crull, All-Spec Metal Systems, Holts Summit
- 4) Richard Johnson, Circle J Campground, Lebanon
- 5) Scott George, Mid-America Dental & Hearing Center, Mt. Vernon
- 6) Roberta Johnson, Country Side Greenhouse, Ash Grove
- 7) Russ Henry, IdentiPro, Kansas City
- 8) Nancy Good, The Title Place, Joplin

Tom Kauffman

Mr. Kauffman testified about a bid for the Missouri National Guard. Mr. Kauffman went through the process of getting prices and sending the information to his bonding company stating that the owner of the contract was the Missouri National Guard Training Center. Mr. Kauffman was the lowest bidder of six bidders, but had no response from Design and Construction. Mr. Kauffman had several exchanges with Design and Construction but was unable to get a clear response. Mr. Kauffman's bid was thrown out due to the incorrect listing of National Guard as the owner instead of the Design and Construction.

State Agency Response:

The Office of Administration, OA, has appointed a liaison the SBRFB. OA does take into account the size of businesses when writing instructions for bid proposals. We are aware of the limitations in their resources and do everything we believe is reasonable to make bidding our projects as simple and straightforward as possible. Furthermore we have allowed bidders to correct minor clerical errors in bid documents. The difficulty is in determining what is minor. We have reviewed Mr. Kauffman's complaint comprehensively and believe that our decision is both fair and equitable. One of the specific purposes of the Contractors Liaison Committee is to discuss our proposed changes in procedures, processes and forms before launching the changes. This affords us input from the contracting community to try to assure that we have considered any changes from the contractors' perspective.

Becky Heimerick

Ms. Heimerick testified about the office supply contracts with the Office of Administration in the State of Missouri. Ms. Heimerick expressed concern that several state departments have mandated contracts which dictates where to buy all their office supplies. Ms. Heimerick believes that the state agencies should have the opportunity to look at additional suppliers and be able to make their selection based on what is in the best interest of the state.

State Agency Response:

Ms. Heimerick’s comment focuses upon the internal management of how individual agencies conduct business. A preferred vendor is normally the first choice of an agency. However, there is no mandate that agencies use a specific company to provide office supplies at the exclusion of other companies. Therefore this matter is an internal management issue and not the subject of a rule established by the Office of Administration.

Bill Crull

Mr. Crull expressed interest in three separate items when dealing with Office of Administration. First, Mr. Crull said the MBE/WBE program has been revised and turned around where there is reverse discrimination. Secondly, Mr. Crull testified about the fact that he is involved in litigation now with the general contractor his company was used as a sub contractor for and has not been paid. Lastly, Mr. Crull brought up concerns about resale tax issue.

State Agency Response:

All-Spec was able to meet the MBE goal but fell short on the WBE goal. Thus the Department determined that All-Spec did not make a good faith effort to obtain WBEs for the project. Since this time, All-Spec and our office has discussed this matter on several occasions and All-Spec was awarded another contract thru the Department using the same process at issue in this case. There is no rule that prohibits All-Spec from participating in contracts to the same manner and degree as any other contractor.

Richard Johnson

Mr. Johnson shared his experiences with the Department of Natural Resources in relation to his violation of the clean water laws. Mr. Johnson was never notified of any changes in the law but was warned his business would be in violation. He hired engineers and did significant improvements to his lagoon. He said five years later, he is now in violation of the clean water laws with DNR once again. DNR has proposed a local sewer system for those using lagoons, and that the businesses need to form the sewer system. Mr. Johnson said he would be willing to work with DNR, but it is not his job to find the money, or to form the sewer system.

State Agency Response:

DNR has appointed a liaison to the SBRFB. DNR records do not reflect the required application, engineering submissions nor department review and approval from Mr. Johnson. DNR does not make determination regarding the exact repair or construction that is needed at individual systems. It is up to the facility owner to consult and hire a professional engineer to evaluate the system. The engineer will develop and submit engineering plans and specifications to DNR for improvements. Decisions by DNR on the lagoon will be based upon the review by the engineering information.

Scott George

Mr. George commented on his experiences with the Department of Labor and Industrial Relations when dealing with Missouri State Unemployment

Compensation Hearings. Mr. George stated DOLIR should return allowing voluntary participation in the hearings. They should understand that small businesses do not have attorneys on staff, nor deep pockets to hire attorneys; they should take into account that small business employees are busy full time on their day-to-day jobs taking care of their customers; they should carefully brief small business employers to approach a hearing like they are going to court. Finally, they should apply the same rules regarding hearsay to both parties.

State Agency Response:

DOLIR has appointed a liaison to the SBRFB. Comment still pending a state agency response.

Roberta Johnson

Ms. Johnson erected a sign at the exit of I-44 to inform customers on how to get to her greenhouse. The Missouri Department of Transportation said the sign was not in legal limits from the highway and needed to be moved. MoDOT came out to the sign location and told Ms. Johnson where to post the sign in legal limits. She complied and moved the sign where MoDOT had suggested. MoDOT came out again to saw the sign down; it was suggested she call MoDOT in Jefferson City. Roberta was commented that her case should have been resolved and if she liked she could request a hearing but it would be a waste of her time because no one has won a case against MoDOT.

State Agency Response:

MoDOT did determine the lines of communication discussed in Ms. Johnson’s comment had been tangled within the Department. In a matter of three months MoDOT and SBRFB were able to work together to remedy Roberta’s problem. MoDOT has appointed a liaison to the SBRFB and erected the sign in the legal limit area.

Russ Henry

Mr. Henry submitted a bid with the Office of Administration for their electronic fingerprinting services but was underbid by an out of state agency. Mr. Henry made clear that his issue is not the decline of their bid but the states requirement of contract service for private industries. Mr. Henry explained that the state supplied a letter and email to contracted and non contracted professional registration agencies saying they were no longer allowed to use his services but the state sponsored company.

State Agency Response:

While there is no cost to the state, the overall cost of accessing the system is certainly an issue of consideration and it is a legitimate governmental purpose to keep the cost as low as possible. The contract the state entered into with Identix identifies Identix as the sole company permitted to access the MHSP CRID computer network to submit fingerprints electronically. This is not a political issue; this is a security issue and one which the State of Missouri takes very seriously. Having one vendor for a service is not uncommon in government. Identix employs many Missouri residents and pays taxes to the State of Missouri as well.

Nancy Good

Ms. Good has concerns with the inconsistency of licensing information with the Department of Insurance, Financial Institutions and Professional Registration. Ms. Good has met with the Department of Insurance in the past and there is still this lack of consistency with licensing requirements. Ms. Good also has concerns with the fees and the appropriateness.



State Agency Response:

Department of Insurance, Financial Institutions and Professional Registration have appointed a liaison to the SBRFB. The Consumer Affairs Division, within the Department of Insurance, released Bulletin 06-05 clarifying the current law. This bulletin was accompanied with the response. The Department is seeking legislation that would specify those individuals who must be licensed and raising the professional educational standards of title agents.

REGULATORY ALERT SUBSCRIPTION

The SBRFB offers small businesses the opportunity to join a Regulatory Alert Subscription. The SBRFB will be sending out Regulatory Alerts to interested small businesses via email of rules and regulations with a small business impact statement as they come in effect. The Regulatory Alerts will be sorted by State Agency and each small business will have the opportunity to choose what State Agencies they would like to receive alerts from. The system allows businesses to subscribe and unsubscribe at any time. There is no cost for the subscription and anyone can participate. To subscribe and unsubscribe small businesses will visit the SBRFB website at www.sbrfb.ded.mo.gov and click on the Subscribe to Regulatory Alerts button.

SBRFB 2007 PLANS

The SBRFB will continue to act in the interest of small businesses across the state of Missouri by responding to comments received via Comment Form and Public Hearings. The Regulatory Alert Subscriptions will help to create awareness for small business owners when dealing with state agency regulatory matters.

The SBRFB will continue to create a working relationship with Missouri State Agencies with expectations of decreasing the unfair burdens on small businesses. The SBRFB will confirm the state agencies have complied with the five recommendations of the SBRFB and will evaluate accordingly.

Each state agency shall; with rules that affect small business; submit by June 13, 2007 a list of such rules to the General Assembly and the SBRFB. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued existence.